No. [illegible]

IN THE

United States
Circuit Court of Appeals
For the Ninth Circuit

JOHN E. CORBETT, sometimes know as J. E. CORBETT, and NORA E. BISHOP, alias ELLEN STONE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR

On Writ of Error to the United States District Court for the District of Idaho Southern Division.

E. C. DAVIS,
United States District Attorney.
JAMES F. AILSHIE, JR.,
Assistant United States District Attorney,
Residence, Boise, Idaho.
Attorneys for Defendant in Error.

J. T. COOK,
S. L. TIPTON,
Residence, Boise, Idaho,
Attorneys for Plaintiffs in Error.

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STATEMENT OF THE CASE.

By consent of counsel two indictments were joined for trial. The first of these, No. 954, was against the plaintiff in error, John R. Corbett, alone. It charged, in Count I, the transportation, on or about the 20th day of January, 1923, of plaintiff in error Nora E. Bishop, alias Ellen Stone, in interstate commerce from Spokane, Washington, to Boise, Idaho, with the intent and purpose on the part of the said Corbett to induce, entice and compel her to engage in illicit sexual intercourse with him, the said Corbett. (Tr. pp. 7-8) This same indictment charged, in Count II, that the said Corbett, on or about the 11th day of January, 1923, persuaded, induced and enticed the said Nora E. Bishop, alias Ellen Stone, to go and be carried, and that she did go and was carried, in interstate commerce from Spokane, Washington, to Boise, Idaho, for the same immoral purposes charged in the first count of the indictment. (Tr. pp. 8-9).

The second indictment, No. 995, was against the two defendants jointly and charged a conspiracy to ~~the~~ effect the transportation charged in the first count of indictment No. 954. (Tr. pp. 10-16). This indictment is in the usual form.

At the trial, plaintiff in error Corbett was found guilty on both counts of indictment No. 954, and he and plaintiff in error, Nora E. Bishop, were found guilty as charged in indictment No. 995.

(Tr. p. 18) On indictment No. 954 the plaintiff in error Corbett was sentenced to pay a fine of One Thousand ($1,000.00) Dollars and to be imprisoned and kept in the Ada County jail for the term of ten months. (Tr. p. 19) On indictment No. 995, he was sentenced to be imprisoned and kept in the same jail for a term of ten months, the said term to run concurrently with the term imposed under indictment No. 954. (Tr. p. 21) Plaintiff in error, Nora E. Bishop, was sentenced to be imprisoned and kept in the Twin Falls County jail for the term of three months. (Tr. p. 20) Plaintiff in error, Bishop, immediately entered upon the service of her sentence and this appeal, insofar as she is concerned, presents only a moot question.

The essential facts of this case are as follows:

Plaintiff in error, Nora E. Bishop, alias Ellen Stone, was, on October 3, 1922, in the Federal Court at Boise, Idaho, tried on a charge of embezzling post office funds. She was at that time, as also at the time of the trial in this case, a married woman, having a family of four children ranging from three to seventeen years of age. (Tr. p. 26) Corbett had met Mrs. Bishop some time prior to her trial for embezzlement on October 3, 1922. While she was in jail at Boise, awaiting that trial, she sent for Corbett and he thereafter interested himself in her defense. Following her acquittal by the jury, Corbett took her to the Capitol Hotel in

Boise where she was assigned to room 39. Later that same evening, she was moved, at Corbett's request, to room 33, this latter room being just across a narrow hallway from room 32, which was then and which for some time prior thereto had been occupied by Corbett. (Tr. p. 26) Corbett and Mrs. Bishop continued to occupy rooms 32 and 33, respectively, until about the first day of November following, when they jointly requested that they be transferred to rooms 27 and 65. These were adjoining rooms with a communicating door between. A short time later they again requested a change of rooms, this time to rooms 36 and 37. These last mentioned rooms constituted what was known in the Capitol Hotel as a housekeeping suite, room 36 being a bedroom and room 37 a kitchen. Corbett requested the landlady to place a cot in the kitchen of this suite for his use. The door between rooms 36 and 37 could be locked from either side. On the side of the door in room 37, there was an oldfashioned lock with a key and also a bolt. On the side of the door in room 36, occupied by Mrs. Bishop, there was a latch. The landlady testified that she took no account of whether the door was locked or unlocked. (Tr. pp. 26-27) They continued to occupy these rooms 36 and 37 until the 18th day of December, when Mrs. Bishop received a telegram from her daughter in Spokane, where her family was then living, couched in the following terms:

"Ted and I are going to be operated on on the twenty-first of December. Come before it is too late.

(Signed) Daughter." (Tr. p. 27)

The defendant immediately left for Spokane, where she rejoined her family and assisted in the care of her two children who had been operated upon as indicated in the telegram. She remained with them about a month. (Tr. p. 28) The defendants testified that Corbett loaned Mrs. Bishop the money on which to go to Spokane and that while she was there, between the 18th day of December, 1922, and the 19th day of January, 1923, he sent her fifteen dollars additional. (Tr. p. 28)

On January 10, 1923, Mrs. Bishop, under the name of Ellen Stone, sent Corbett the following telegram:

"Spokane, Washington, January 10, 1923.
J. R. Corbett,
Capitol Hotel,
Boise, Idaho.
Received your letter yesterday. There was a mistake. Was glad to hear from you and please do not be worried when you receive my letter.

(Signed) Ellen Stone." (Tr. p. 28)

The following day, Corbett wired Mrs. Bishop, under the name of Ellen Stone, as follows:

"Boise, Idaho, January 11, 1923.
Ellen Stone,
3809 Liberty St.,
Spokane, Washington.
Sending money to come home on. Wire when you start.
(Signed) J. R. Corbett." (Tr. p. 28)

On the 13th of January, 1923, Mrs. Bishop, under the name of Ellen Stone, telegraphed Corbett as follows:

"Spokane, Washington, January 13, 1923.
J. R. Corbett,
Capitol Hotel,
Boise, Idaho.
Have been very poorly for past week. Will start as soon as I am able. Wire me if you think it best for me to bring Paul. Just say yes or no.
(Signed) Ellen Stone." (Tr. p. 29)

The "Paul" referred to in this telegram was the three year old son of Mrs. Bishop. In response to this telegram, Corbett wired Mrs. Bishop, under the name of Ellen Stone, as follows:

"Ellen Stone,
3809 Liberty St.,
Spokane, Washington.
Do not think so at this time. Come as soon as you can.
(Signed) J. R. Corbett." (Tr. p. 29)

On January 14, 1923, Mrs. Bishop, under the name of Ellen Stone, wired Corbett as follows:

"Spokane, Washington, January 14, 1923.
J. R. Corbett,
Capitol Hotel,
Boise, Idaho.
Will come at once.
(Signed) Ellen Stone." (Tr. p. 29)

With the money sent by Corbett to Mrs. Bishop on January 11th, she purchased a ticket over the Oregon-Washington Navigation and Railroad Company and the Oregon Short Line Railroad Company from Spokane, Washington, to Weiser, Idaho, and on the evening of the 18th of January, 1923, left Spokane, Washington, for Boise, Idaho. While enroute, she wired Corbett from Umatilla, Oregon as follows:

"Umatilla, Oregon, January 19, 1923.
John Corbett,
Capitol Hotel,
Boise, Idaho.
Wire me a ticket to Weiser, Idaho, or meet me there. Leaving Umatilla January twentieth, five a. m.
(Signed) Ellen Stone." (Tr. p. 30)

Complying with this telegram, Corbett purchased a ticket from the agent of the Oregon Short Line Railroad Company at Boise, paying therefor the sum of Two Dollars and Eighty-eight cents ($2.88). This ticket was sent to Mrs. Bishop and she used the same in completing her journey from Weiser, Idaho, to Boise, Idaho. (Tr. p. 30) Mrs. Bishop brought with her, from her husband's home in Spokane, their three year old child. (Tr. p. 31)

She was met at the depot in Boise by Corbett, who carried her baggage and the two went together to the Capitol Hotel. She did not report at the desk or register but went directly to room 36 which she had occupied before going to Spokane. Corbett went with her and built a fire in her room. Shortly thereafter he made her cup of coffee in his room and she and her child had a light lunch in his room. They were arrested about midnight on a charge of violating the White Slave Traffic Act. (Tr. p. 31)

The deputy marshal who made the arrest asked the landlady of the hotel in what room he would find Corbett and she said room 36. He knocked at this door and after waiting two or three minutes, Mrs. Bishop came to the door. He asked her where Corbett was. She replied that he was in room 37. (Tr. p. 31) The deputy marshal then knocked on the door of room 37 opening from that room into the hall. After a short time Corbett came to that door and unlocked it but it would not open sufficiently to permit him to come out. It struck a commode after opening a short distance, which the witness indicated as about a foot. Corbett later moved the commode and came into the hall. (Tr. p. 32) The landlady testified that when rooms 36 and 37 were used by independent parties, this commode ordinarily stood in front of the communicating door between the two rooms and that

if it was moved toward the door leading from room 37 into the hall, so as to permit passage from room 37 into room 36, through the communicating door, the commode would then be in position where it would prevent the opening of the door from room 37 into the hall. (Tr. p. 32) This was the position in which the commode was found by the deputy marshal.

After Mrs. Bishop had been given time in which to put on some clothes, the deputy marshal stepped into her room and found the latch on the communicating door on her side unfastened. He testified that later on and before leaving the room, he found the door locked on Mrs. Bishop's side with the latch and he testified that Mrs. Bishop admitted to him that she had slipped the latch into place while his back was turned.

Mrs. Bishop testified that she was in love with Corbett and that at the time of the incidents narrated above she intended to get a divorce from her husband. She admitted, however, that up to the date of the trial, September 17, 1923, she had not commenced an action for divorce. (Tr. p. 32) Mrs. Bishop testified that at the time she left Boise to go to Spokane, she intended to return and left some of her things in room 36 at the Capitol Hotel during her absence. (Tr. p. 33) From the time that Mrs. Bishop went to the Capitol Hotel on October 3, 1922, up to the time that these parties

were arrested, on January 20, 1923, Corbett had paid the room rent for the various rooms occupied by Mrs. Bishop, notwithstanding the fact that she was employed at the Uneeda Restaurant and took her meals there. (Tr. p. 33) Mrs. Bishop testified that after their arrest, she had repaid forty dollars of this sum to Corbett. (Tr. p. 33)

A motion for a new trial was filed and was, by the court, overruled.

BRIEF OF THE ARGUMENT

The instructions requested by plaintiffs in error and refused by the court do not correctly state the law of this case, nor do the facts of the case even remotely suggest the propriety or pertinency of these instructions.

The facts of this case are wholly dissimilar to the facts in United States vs. Wilson, 266 Fed. 712. In that case the transportation was from Nashville, Tennessee to Chattanooga, Tennessee, with a merely incidental passage through Alabama. Here there was a distinct journey from Boise, Idaho, to Spokane, Washington and another distinct journey from Spokane to Boise. The two journeys were separated by at least a month, during which time Mrs. Bishop was with her family in Spokane where she should have remained.

The cases,

Welsch vs. United States, 220 Fed. 764;
Sloan vs. United States, 287 Fed. 91;
Van Pelt vs. United States, 240 Fed. 346;
Thorn vs. United States, 278 Fed. 932,

cited by plaintiffs in error, are not in point, the facts of those cases being wholly dissimilar from those in the case at bar.

The granting or refusing of a new trial rests in the sound discretion of the trial court and is not reviewable on writ of error.

Leuders vs. United States, 210 Fed. 419, 127 C. C. A. 151;

Ryan, et al vs. United States, 283 Fed. 975.

The appeal in this case is without merit. It presents no new, or doubtful, question of law. On the other hand, the facts of the case are so clearly within the well-settled law, applicable to violations of the White Slave Traffic Act, that the appeal is wholly without justification.

ARGUMENT

The first two assignments of error may be grouped together for purposes of discussion. They are to the effect that the court erred in refusing to give the following instructions:

> "The jury are instructed, if you find from the evidence that the defendants were domiciled and living at Boise, Idaho, and that Nora E. Bishop, alias Ellen Stone, was transported in interstate commerce to Spokane, State of

Washington, and returned to Boise, Idaho, and at the time of leaving Boise, Idaho, she left her position of employment both defendants fully intended that she would return to her employment at Boise, Idaho, after having visited her children at Spokane, Washington, and if you further find from the evidence that the defendant, Corbett, at the time of her leaving Boise, Idaho, arranged with her to furnish her the money and did furnish her the money to pay her transportation in interstate commerce to Spokane, Washington and return to Boise, Idaho, and if you should further find from the evidence that the defendants prior to and at the time of her going to Spokane and returning to Boise had illicit intercourse, you should acquit them."

"The jury are instructed that if you are satisfied from the evidence that the defendants were domiciled and living at Boise, Idaho, and while so domiciled and living, Nora E. Bishop, alias Ellen Stone, was transported in interstate commerce to Spokane, Washington, from Boise, Idaho, and returned from Spokane, Washington, to Boise, Idaho, and at the time of leaving Boise, Idaho, for Spokane, Washington, she left her position of employment, both of the defendants fully intending at the time she left Boise, Idaho, that she would return from Spokane, Washington, to her employment at Boise, Idaho, after having visited her children at Spokane, Washington, and if you find from the evidence that the defendant, J. R. Corbett, at the time of her leaving Boise, Idaho, for her said trip to Spokane, Washington, and return arranged with her to furnish the money and did furnish her the money to pay her transportation in interstate commerce to Spokane, Washington and return to Boise,

> Idaho, and even if you should further find from the evidence that the defendants prior to and at the time of her going from Boise, Idaho, to Spokane, Washington, and returning to Boise, Idaho, had illicit intercourse, and if you further find from the evidence that he had in mind at the time of furnishing transportation that he would continue the prior illicit intercourse with her, you should acquit them."

No court reporter was used in this case and the instructions, as orally given by the court, were not reduced to writing. It was agreed, however, by court and counsel for the respective parties that no instructions were given by the court substantially covering these instructions requested by plaintiffs in error. (Tr. p. 35)

It would be difficult to say just what counsel had in mind in formulating these proposed instructions, for it is clear they do not state the law as it has been construed by the courts in cases of this character. The court did not err, therefore, in refusing to give them. Considering these instructions in the light of the argument and citation of authorities, made in the brief submitted by plaintiffs in error, it appears that the instructions were based, in part at least, upon an attempt to make it appear that the present case falls within the rule announced in United States vs. Wilson, 266 Fed. 712.

In that case the transportation charged was from Nashville, Tennessee to Chattanooga, Tennessee, "with a merely incidental passage through

Alabama, and not a transportation from Alabama to Tennessee within the meaning of the Act." The situation here is, however, entirely different from the situation in the Wilson case, for this is not a case where there was "a merely incidental passage" through another state. It is clear, at the outset, that in the case at bar we have two entirely separate and distinct trips. The first was the trip from Boise to Spokane made by Mrs. Bishop on December 18, 1922, when she went to the latter place to rejoin her family. At the time she left Boise, she may have intended to return there and Corbett may have understood that she would return there; but this does not alter the fact that her return was an entirely separate and distinct trip from the one she made in going from Boise to Spokane. It is clear from the record as a whole that she did not know how long she would remain at Spokane and it is also clear from the record that she did not take with her sufficient money with which to make the return trip. This had to be sent to her by Corbett when they were planning her return. (Tr. p. 28)

In another aspect these requested instructions seem to be based upon a general misunderstanding of the White Slave Traffic Act and of certain cases cited in the brief of plaintiffs in error. With much apparent reliance, opposing counsel cite Welsch vs. United States, 220 Fed. 764. In that case the defendant was acquitted on a charge of transporting

the victim for immoral purposes but was convicted of persuading and enticing her to make the interstate trip in question for immoral purposes. The holding of the Circuit Court of Appeals in that case was to the effect that the evidence not only did not sustain the charge of persuasion and enticement but, on the other hand, negatived this charge. The only possible bearing that case could have upon the case at bar would be on the question of whether the evidence in this case was sufficient to sustain the conviction of Corbett on the second count of indictment No. 954. It could have no possible bearing upon the correctness of these requested instructions.

Another case cited by plaintiffs in error, apparently in support of these requested instructions, is that of Sloan vs. United States, 287 Fed. 91. In that case the defendant and the victim, both of whom lived in Illinois, had for some time prior to the transportation in question—a trip to St. Louis, Missouri—sustained immoral relations in Illinois. The court reiterated the well-known rule that, in a case of interstate transportation, under the White Slave Traffic Act, the unlawful intent specified in that Act—that is, the intent to entice, induce or compel the woman to give herself up to debauchery or other immoral practices—must be formed in the state from which the woman is transported, and that the evidence is not sufficient to sustain a conviction if it clearly appears that

this unlawful intent was first formed in the state to which the woman was transported and after the transportation was completed. The court said:

> "There is nothing in the evidence to show any possible reason why he should have gone to the trouble and expense of taking her to St. Louis merely in order that he might have illicit intercourse with her." (287 Fed. 93).

The facts of the Sloan case, and the law as there enunciated by the court, might be of some value in the present case if it were charged that Corbett had transported Mrs. Bishop from Boise, Idaho, to Spokane, Washington, for immoral purposes. This was not charged and in fact the trip which Mrs. Bishop made from Boise to Spokane forms no part of the present case.

Similarly, Van Pelt vs. United States, 240 Fed. 346, is cited as though it were authority in favor of the correctness of these requested instructions. The facts of that case and the phase of the White Slave Traffic Act which it illustrates are sufficiently stated in paragraph four of the syllabus to that case. This reads as follows:

> "A man who procured the interstate transportation of a girl, with whom he had had intercourse whenever he sought it during the past three years, for the purpose of procuring a place where she could remain until after her confinement, cannot be convicted under the White Slave Act, though he accompanied her and anticipated that he would have intercourse

> with her after she left the state, if such anticipation played no part in inducing him to procure the transportation."

Nothing derived from the law of that case can be helpful to the plaintiffs in error here, and clearly it does not even remotely tend to establish the correctness of the requested instructions in support of which the case is cited.

In this connection, also, the case of Thorn vs. United States, 278 Fed. 932 is cited. In that case the court held that the evidence was insufficient to sustain a conviction of the defendant,

> "for knowingly causing the transportation of a girl from one state into another for an immoral purpose, where the testimony of the girl, which was uncontradicted, was that she insisted on going to a city in the other state, for reasons which she stated, and that she paid for both tickets."

Clearly there is nothing is this case which suggests the correctness of the requested instructions.

The record does not indicate just when Mrs. Bishop first separated from her family. This may have been at the time of her imprisonment on the charge of embezzling post office funds. (Tr. p. 26) The record does show, however, that she did not rejoin her family upon her release from custody on October 3, 1922, but instead took up her associations with Corbett at the Capitol Hotel in Boise, Idaho. (Tr. p. 26) These associations con-

tinued until December 18, 1922, when she left Boise and went to her family at Spokane. (Tr. p. 27) The defendant Corbett appears to have loaned Mrs. Bishop the money on which to go to Spokane and he testified that while she was there he sent her fifteen dollars additional. (Tr. p. 28) It thus appears that Corbett was undoubtedly interested in Mrs. Bishop and that he perhaps hoped and intended that she would return to him at Boise when her visit to her family was over. At the trial of the case it was not denied that Corbett had transported Mrs. Bishop back from Spokane to Boise, as charged in the first count of indictment 954, and it was admitted that on January 11, 1923, he had wired her at Spokane as follows:

> "Sending money to come home on. Wire when you start." (Tr. p. 28)

It was also admitted that he had purchased at Boise, Idaho, and sent to her at Weiser, Idaho, a railroad ticket to enable her to complete her journey to Boise. (Tr. p. 30) This left to be established, by other facts and circumstances, only the intent with which Corbett furnished the transportation as charged in the first count of indictment 954.

As to the second count of indictment 954, charging Corbett with persuading and enticing Mrs. Bishop to return from Spokane to Boise, the evi-

dence of the persuasion and enticement is contained in the following telegrams:

> January 11, 1923, Corbett to Mrs. Bishop:
> "Sending money to come home on. Wire when you start." (Tr. p. 28)
> January 13, 1923, Mrs. Bishop to Corbett:
> "Have been very poorly for past week. Will start as soon as I am able. Wire me if you think it best for me to bring Paul. Just say yes or no." (Tr. p. 29)

Corbett to Mrs. Bishop, date of telegram not shown in transcript, but in answer to telegram just above set out:

> "Do not think so at this time. Come as soon as you can."
> January 14, 1923, Mrs. Bishop to Corbett:
> "Will come at once."

Beyond any question this was sufficient evidence to go to the jury on the question of whether or not Corbett did persuade and entice Mrs. Bishop to return to Boise, and is sufficient also to sustain the verdict reached by the jury.

With reference generally to the relations which existed between Corbett and Mrs. Bishop at Boise, prior to her going to Spokane, it is clear that however freely they may have indulged their illicit relations in Idaho, the moment Mrs. Bishop reached Spokane and rejoined her family, the situation was completely changed. The relations previously existing at Boise were, temporarily at

least, at an end. If they were to be resumed, Mrs. Bishop must be brought back from Spokane, to Boise, or at least induced to return there. She was now with her family at Spokane. That was her home. That was her place of duty. That was where her obligations to her husband and her children required her to remain. In furnishing her the transportation to return to Boise and in persuading and enticing her so to return for resumption of their immoral relations, there can be no question that Corbett violated the White Slave Traffic Act and that he was justly convicted on both counts of indictment 954.

ASSIGNMENT OF ERROR NO. III.

Under this assignment it is set out that "the verdict of the jury is contrary to the evidence." This conflict is stated in a number of specifications lettered from (a) to (l), inclusive. Under sub-head (a) it is said:

> "There is no proof that the transportation in interstate commerce was with the intent and purpose that Nora E. Bishop give herself up to debauchery and other immoral practices."

The jury found otherwise; and the facts in this case, as set forth in the transcript and in this brief, are clearly sufficient to support the finding.

In sub-head (b) it is said:

> "There is no direct proof as to any illicit intercourse between the defendants at any time."

In no case under the White Slave Traffic Act is it absolutely necessary to prove illicit intercourse; but, even if such proof were necessary, it would not have to be made by direct testimony.

In sub-head (c) it is said:

> "There is no proof that Nora E. Bishop was transported from one state to another."

The evidence was all to the contrary, and the fact of transportation was not even questioned at the trial.

In sub-head (d) it is said:

> "There is no direct proof as to Nora E. Bishop being transported in interstate commerce with the intent and purpose that she give herself up to debauchery and other immoral practices."

The fact of transportation being established and admitted, it is sufficient to observe here that intent and purpose can seldom, if ever, be shown by direct proof. It was competent to show intent by any fact or circumstance which tended to establish it.

Under sub-head (e) it is said:

> "There is no proof that there was at any time, illicit sexual intercourse between the defendants."

It was not necessary in this case to prove an act of sexual intercourse as a separate and independent fact, when all the evidence showed that Corbett and Mrs. Bishop had been for a long time occupying rooms together with practically the same freedom as though they had been man and wife.

Under this assignment of error, the brief of plaintiffs in error, pages 22 to 24, inclusive, contains a discussion and some citation of authorities having to do with the principle, as stated in the brief, that "a fact cannot be established by a presumption upon a presumption." Just what the writer of the opposing brief had in mind is not entirely clear. He may have meant to say that illicit sexual intercourse between the plaintiffs in error is not shown by direct proof, but must be presumed from other facts established in evidence; and that the intent, on the part of Corbett, in transporting Mrs. Bishop from Spokane to Boise, to induce or compel her to submit herself to immoral relations with him, is a presumption which, to be established, must be based upon the presumption that illicit sexual relations actually followed the the transportation. The answer to this, however, is that it is not necessary to presume any act of sexual intercourse between these parties after the return of Mrs. Bishop from Spokane. All that was necessary to be established by circumstantial evidence was the intent of Corbett in transporting her from Spokane back to Boise and this intent the

jury was at liberty to infer from all the pertinent facts and circumstances in the case. It cannot be said that these facts and circumstances were not sufficient to warrant the jury in finding that he entertained the necessary intent.

Under sub-head (f) it is said:

> "There is not proof as to any illicit intercourse except circumstantial evidence of their association together in the Capitol Hotel prior to her transportation in interstate commerce from Spokane, Washingon to Boise, Idaho, or upon her return to Boise, Idaho."

There can be no valid, legal objection to circumstantial evidence to prove illicit intercourse provided it was found by the jury to be sufficient in kind and quantity to produce conviction under the instructions of the court as to the law of the case.

Under sub-head (g) it is said:

> "There is no proof that any offense was committed as prohibited or denounced by the White Slave Traffic Act, or any law of the United States."

and in sub-head (h) it is said:

> "There is no proof that the transportation in interstate commerce was with any other intent or purpose than a legitimate purpose."

These specifications call for no comment.

In sub-head (i) it is said:

> "There is no evidence of a conspiracy showing any intent on the part of either of the defendants as charged in indictment No. 995."

This evidence is found in the situation in which parties lived at Boise, prior to the time Mrs. Bishop went to Spokane, in the fact that Corbett loaned her money to pay for her transportation back to Boise and in the messages which passed between them while she was at Spokane as set out on pages 28 and 29 of the transcript.

In sub-head (j) it is said:

> "There is no proof that the transportation in interstate commerce was with the intent and purpose on the part of John R. Corbett to induce, entice and compel Nora E. Bishop, alias Ellen Stone, to engage in immoral practices as set out in the first count of indictment No. 954."

There is nothing new in this specification and it has been sufficiently covered by what has already been said:

In sub-head (k) it is said:

> "There is no proof that the defendant John R. Corbett induced, enticed or persuaded Nora E. Bishop, alias Ellen Stone, to be transported with the intent and purpose that she engage in immoral practices with him as alleged in count two of the indictment No. 954."

The proof in the record as to persuasion and enticement has already been set out in this brief, and need not be here repeated.

In sub-head (1) it is said:

> "There is no proof that John R. Corbett aided, assisted or caused Nora E. Bishop, alias Ellen Stone, to be carried and transported from Spokane, Washington to Boise, Idaho, as alleged in count two of the indictment No. 954."

There was never any question that Mrs. Bishop made the trip from Spokane to Boise over the lines of the branch of the Union Pacific railroad connecting these two points. If the evidence heretofore pointed out is sufficient to establish persuasion and inducement, the fact that the journey resulted from the inducement might properly be inferred from the other facts established.

ASSIGNMENT OF ERROR NO. IV.

Under this assignment, it is set out that,

> "The court erred in denying defendants' motion for a new trial for the reasons set out in assignments (a) to (1), inclusive, of number 3 and assignments numbers I and 2 herein."

It is well settled that the granting or refusing of a new trial rests in the sound discretion of the trial court and is not reviewable on writ of error.

Leuders vs. United States, 210 Fed. 419, 127 C. C. A. 151;

Ryan, et al, vs. United States, 283 Fed. 975.

ASSIGNMENT OF ERROR NO. V.

Under this assignment it is said:

> "The verdict herein is contrary to the law, for the reasons set out in assignment No. 3."

What has been said in discussing assignment No. 3 and its various sub-heads is equally applicable here.

ASSIGNMENT OF ERROR NO. VI.

Under this assignment it is said:

> "The verdict herein is contrary to law for the reason that the indictment does not state a conspiracy, as there is no joint intent alleged therein."
>
> "The judgments herein are unlawful for the reasons that they are based upon verdicts unlawful and unsupported by the evidence in the particulars set out in specification No. 3, herein stated."

The second paragraph of this assignment is merely a rehash of what has been previously stated in at least two other assignments. The assertion that indictment No. 995 does not state a conspiracy for the reason that no joint intent is alleged is without merit. The indictment clearly states a conspiracy to violate the transportation clause of the White Slave Traffic Act. The only intent specified in that clause of the Act is the intent on the part of the transporter that the woman transported should give herself up, in the State to which trans-

In sub-head (1) it is said:

> "There is no proof that John R. Corbett aided, assisted or caused Nora E. Bishop, alias Ellen Stone, to be carried and transported from Spokane, Washington to Boise, Idaho, as alleged in count two of the indictment No. 954."

There was never any question that Mrs. Bishop made the trip from Spokane to Boise over the lines of the branch of the Union Pacific railroad connecting these two points. If the evidence heretofore pointed out is sufficient to establish persuasion and inducement, the fact that the journey resulted from the inducement might properly be inferred from the other facts established.

ASSIGNMENT OF ERROR NO. IV.

Under this assignment, it is set out that,

> "The court erred in denying defendants' motion for a new trial for the reasons set out in assignments (a) to (1), inclusive, of number 3 and assignments numbers I and 2 herein."

It is well settled that the granting or refusing of a new trial rests in the sound discretion of the trial court and is not reviewable on writ of error.

Leuders vs. United States, 210 Fed. 419, 127 C. C. A. 151;

Ryan, et al, vs. United States, 283 Fed. 975.

ASSIGNMENT OF ERROR NO. V.

Under this assignment it is said:

> "The verdict herein is contrary to the law, for the reasons set out in assignment No. 3."

What has been said in discussing assignment No. 3 and its various sub-heads is equally applicable here.

ASSIGNMENT OF ERROR NO. VI.

Under this assignment it is said:

> "The verdict herein is contrary to law for the reason that the indictment does not state a conspiracy, as there is no joint intent alleged therein."
>
> "The judgments herein are unlawful for the reasons that they are based upon verdicts unlawful and unsupported by the evidence in the particulars set out in specification No. 3, herein stated."

The second paragraph of this assignment is merely a rehash of what has been previously stated in at least two other assignments. The assertion that indictment No. 995 does not state a conspiracy for the reason that no joint intent is alleged is without merit. The indictment clearly states a conspiracy to violate the transportation clause of the White Slave Traffic Act. The only intent specified in that clause of the Act is the intent on the part of the transporter that the woman transported should give herself up, in the State to which trans-

ported, to debauchery or other immoral practices. Such an intent on the part of Corbett is clearly alleged in indictment No. 995.

In discussing this same indictment it is stated, near the bottom of page 26 of the opposing brief, that "further the indictment No. 995 does not allege that the conspiracy was to transport a woman or girl as is required by the White Slave Traffic Act." It is true that indictment No. 995 does not specifically refer to Nora E. Bishop, alias Ellen Stone, as a woman or girl. It does, however, say that the conspiracy was that Nora E. Bishop, alias Ellen Stone, should go and be transported and that Corbett should transport and cause to be transported and aid and assist in transporting the said Nora E. Bishop, alias Ellen Stone, between the points alleged with the intent and purpose on the part of him, the said Corbett, to induce, entice and procure the said Nora E. Bishop, alias Ellen Stone, to give herself up to debauchery and to other immoral practices. Regardless of what may have been the ruling, if this indictment had been demurred to before trial, it is clear that after trial and after the verdict, Nora E. Bishop, alias Ellen Stone, having appeared as a woman and having admitted (Tr. p. 26) that "she was at that time and is now, a married woman, having a family of four children ranging from three to seventeen years of age," it cannot be contended that the indictment

is insufficient in not having more specifically referred to her as a woman or girl.

We submit that the appeal to this court is clearly without merit; that no new or doubtful points of law have been raised; that the time of this court will have been needlessly consumed; and that the verdict of the trial court should be affirmed.

E. G. DAVIS,
United States Attorney,
for the District of Idaho,

JAMES F. AILSHIE, JR.,
Assistant United States Attorney,
for the District of Idaho,
Residence, Boise, Idaho,
Attorneys for Defendant in Error.